

FEDERAL ELECTION COMMISSION  
999 E Street, N.W.  
Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

**SENSITIVE**

MUR: 4758  
DATE COMPLAINT FILED: 6/12/98  
DATE OF NOTIFICATION: 6/17/98  
DATE ACTIVATED: 9/11/98

STAFF MEMBER: J. M. Rodriguez

COMPLAINANT:

Robert E. Welsh

RESPONDENTS:

C. Boyden Gray  
Jeanne Fletcher  
New Republican Majority Fund and  
J. Stanley Huckaby, as treasurer  
Senator Trent Lott

RELEVANT STATUTE(S):

2 U.S.C. § 441a(a)(1)(A)  
2 U.S.C. § 441a(a)(1)(B)  
2 U.S.C. § 441a(a)(1)(C)  
2 U.S.C. § 441a(a)(3)  
2 U.S.C. § 441a(f)  
2 U.S.C. § 441f

INTERNAL REPORTS CHECKED:

Disclosure Indices

FEDERAL AGENCIES CHECKED:

None

**I. GENERATION OF MATTER**

Based on a news account appearing in the May 28, 1998 edition of the Wall Street Journal, on June 12, 1998, Robert E. Welsh filed a complaint alleging that C. Boyden Gray, former counsel to former President George Bush, knowingly and willfully violated 2 U.S.C. § 441f by making contributions in the name of his personal assistant, Jeanne

Fletcher, and that Ms. Fletcher violated the same provision by allowing her name to be used to make the contributions at issue. Complainant further alleges that Mr. Gray knowingly and willfully violated 2 U.S.C. § 441a(a)(3) by exceeding the annual twenty-five thousand dollar limit on federal contributions and 2 U.S.C. § 441a(a)(1)(C) by making an excessive contribution to the New Republican Majority Fund, a leadership PAC closely associated with Senator Trent Lott. Last, complainant alleges that the New Republican Majority Fund and Senator Trent Lott violated 2 U.S.C. § 441a(f) by accepting Mr. Gray's excessive contributions.<sup>1</sup>

## **II. FACTUAL AND LEGAL ANALYSIS**

A review of all available evidence, including substantial documentation provided by Respondents Gray and Fletcher in response to the complaint in this matter and additional evidence gathered by this Office from the Commission's internal databases, suggest that there is no reason to believe a violation of 2 U.S.C. § 441f has been committed by either Mr. Gray or Ms. Fletcher with respect to the contributions at issue. Similarly, there appears to be no evidence of a violation by either Mr. Gray, the New Republican Majority Fund, or Senator Lott with regard to Mr. Gray's contribution to this committee. Additionally, although this same evidence does demonstrate violations of the twenty-five thousand dollar annual limitation and violations of the individual limitations on contributions to party committees and candidate committees by Mr. Gray, these excessive contributions have been substantially corrected and appear to have resulted from a misunderstanding of the application of the contribution provisions at issue.

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<sup>1</sup> Rather than citing to the Federal Election Campaign Act, Complainant cites only to the relevant Commission Regulations in making the above allegations (viz. Sections 110.4(b), 110.5(b) and 110.1(d)).

Consequently, rather than requesting that the Commission pursue these violations beyond a reason to believe finding, this Office instead recommends that the Commission inform Respondent Gray of any remaining irregularities accompanied by a request that the errors be corrected within thirty days. Upon confirmation from Respondent that the necessary corrections have been made, this Office intends to recommend that the Commission take no further action concerning Mr. Gray and close the file.

#### **A. Alleged Conduit Contributions**

Complainant's allegations that Mr. Gray violated Section 441f by making contributions in the name of his personal assistant, Jeanne Fletcher, and that Ms. Fletcher violated Section 441f by allowing her name to be used to make the contributions, are exclusively premised on the above cited Wall Street Journal news article which reported that some of Mr. Gray's contributions had been attributed by the recipient committees to Ms. Fletcher. The Federal Election Campaign Act of 1971, as amended, (the "Act") prohibits any person from making a contribution in the name of another person, knowingly permitting one's name to be used to effect such a contribution, or knowingly accepting a contribution made by one person in the name of another person.

2 U.S.C. § 441f, *see also* 11 C.F.R. § 110.4(b).

In their joint response to the complaint and accompanying affidavits, Mr. Gray and Ms. Fletcher explain that a number of Mr. Gray's contributions were incorrectly misattributed by the recipient committees to Ms. Fletcher, arguing that at no time did Mr. Gray intend to represent that any contribution was from anyone other than himself. Respondents explain that the misattributions resulted from the method used to make Mr. Gray's political contributions. Mr. Gray's political and charitable contributions were

usually made from an account maintained by Mr. Gray and for which Ms. Fletcher had signature authority.<sup>2</sup> See Response at 8, and Affidavit of Jeanne Fletcher dated July 30, 1998 ("Fletcher Aff."), at ¶¶ 4 and 7 (Exb. C to Response). Samples of the contribution checks show that the checks for all three accounts contained Mr. Gray's name imprinted on the upper-left corner of the check, with Ms. Fletcher's name imprinted just below, followed by the notation "Special Account." See Response at Exb. 17. Respondents explain that, because many of the checks were signed by Ms. Fletcher, a number of recipient committees mistakenly assumed that Ms. Fletcher was the contributor. This occurred despite Mr. Gray's name being imprinted at the top of the checks and the notation, in all of the misattribution cases, directly on the check that the contribution was from C. Boyden Gray.<sup>3</sup> See *id.* Respondents also note that upon notice of the misattributions in 1998, Mr. Gray took prompt corrective action, seeking either immediate re-attributions or refunds of the contributions at issue.<sup>4</sup> See Affidavit of C. Boyden Gray dated July 30, 1998 ("Gray Aff.") at ¶ 2 (Exb. B to Response), and Fletcher Aff. at ¶ 16.

An examination of the contributions originally attributed to Ms. Fletcher shows no discernible pattern of an intent to circumvent the contribution limits. Unlike other

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<sup>2</sup> During the period at issue, this account was consecutively held at three separate banks, American Security Bank, Nationsbank and The Riggs National Bank. See Affidavit of Jeanne Fletcher dated July 30, 1998 ("Fletcher Aff."), at ¶ 4 (Exb. C to Response).

<sup>3</sup> Although Respondents provided check copies for all the misattributed contributions at issue, only the front portion of these checks were provided.

<sup>4</sup> As is explained in the next section of this report, Respondents' were informed of apparent contribution irregularities on two separate occasions, once in 1994 and again in 1998 in connection with the writing of the news article prompting the complaint in this matter. The available documentation suggests, however, that in 1994 Respondents were informed only that Mr. Gray may have exceeded the twenty-five thousand dollar annual limit, and not of the contributions misattributed to his assistant.

instances where contributions made in the name of company employees or personal assistants have demonstrated circumvention because the true contributor source had already contributed the maximum amount to the recipient campaigns, or situations where the conduit contributions began only after the true contributor had reached the twenty-five thousand dollar annual limit, no such pattern is present concerning the contributions here at issue.

Under these circumstances, and based on the available evidence, it does not appear that Mr. Gray sought to disguise the sources of his contributions by using Ms. Fletcher as a conduit, especially considering that many of the contribution checks bore the clear designation "C. Boyden Gray Contribution," or similar language. *See* Response at Exb. 17. Instead, as explained in the response, many of Mr. Gray's contributions were simply incorrectly attributed to his personal assistant by the recipient committees.<sup>5</sup> Accordingly, the Office of the General Counsel recommends that the Commission find no reason to believe that either C. Boyden Gray or Jeannie Fletcher violated 2 U.S.C. § 441f.

#### **B. Alleged Section 441a(a)(3) Violations**

Complainant next alleges that Mr. Gray exceeded the twenty-five thousand dollar annual limit on contributions for the years 1994, 1995 and 1996. These allegations too are premised on the Wall Street Journal news article which reported that Mr. Gray "gave

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<sup>5</sup> Recipient committees are required to attribute any contribution made by check to the last person signing the check, unless there is "evidence to the contrary" on the check. 11 C.F.R. § 104.8(c). Because the contribution checks bore a memo entry disclosing that the contributions were from Mr. Gray, the contributions should have properly been attributed to him.

more the \$50,000 for 1994, about \$26,000 for 1995, and \$31,000 for 1996.” *See* Attachment to Complaint at 2.

Section 441a(a)(3) of the Act limits the total federal contributions by an individual in any calendar year to \$25,000. For purposes of this provision, any contribution to a candidate or candidate committee made in a non-election year counts towards the contributor’s aggregate contributions for the year in which the candidate is next up for election. *See* 11 C.F.R. § 110.5(c)(2).

Respondent Gray acknowledges exceeding the twenty-five thousand dollar annual limit for each of these years, but explains that the excessive contributions were inadvertent, resulting from a fundamental misunderstanding of the application of 2 U.S.C. § 441a(a)(3). Essentially, Respondents Gray and Fletcher explain that it was Ms. Fletcher’s responsibility to keep track of Mr. Gray’s political contributions and to ensure that they were in compliance with all applicable provisions of the Act. *See* Response at 4. At the time that Mr. Gray began making political contributions, 1993-1994, Ms. Fletcher, although aware of the twenty-five thousand dollar annual limit, did not realize that PAC and Party contributions counted towards the limit. *See* Response at 4, Gray Aff. at ¶ 3 and Fletcher Aff. at ¶ 10. Consequently, she did not include these contributions in her accounting of Mr. Gray’s aggregate contributions. Upon notice in 1994 that these contributions did in fact count towards the annual limit, and that certain contributions believed to have been non-federal where in fact federal, Ms. Fletcher re-calculated Mr. Gray’s aggregate contributions and discovered that he had exceeded the annual limit. *See id.* at 5, Gray Aff. at ¶ 4 and Fletcher Aff. at ¶ 11. Consequently, Mr. Gray took immediate corrective action, seeking refunds and redesignations (to non-

federal accounts) of many of his contributions, leading Mr. Gray to believe he had brought himself into compliance with Section 441a(a)(3). *See id.*

As a result of the 1994 miscalculations, Mr. Gray established a system for tracking his political contributions. Under this system, Ms. Fletcher was responsible for familiarizing herself with the Act's applicable provisions and for ensuring that his contributions were in compliance. *See id.* at 5, Gray Aff. at ¶ 5 and Fletcher Aff. at ¶ 9. Richard Scott, Mr. Gray's accountant, was to review this information on a regular basis. *See id.* However, although Ms. Fletcher familiarized herself with the Act's provisions, she failed to fully comprehend the application of the yearly contribution limit.

Ms. Fletcher did not realize that contributions made to a candidate committee counted against the yearly total for the year that the candidate was up for election, and not necessarily for the year of the contribution, if made in a non-election year. *Id.* at 6, Gray Aff. at ¶ 6 and Fletcher Aff. at ¶ 9, *see also* 2 U.S.C. § 441a(a)(3), 11 C.F.R.

§ 110.5(c)(2). Consequently, Ms. Fletcher failed to calculate non-election year candidate contributions into the aggregate for Mr. Gray's election year contributions.

Although now aware that party committee contributions count towards the annual contribution limit, Respondents also explain that several contributions either intended as non-federal or believed to be non-federal were deposited into federal accounts.

Respondents note that the May, 1995 \$10,000 NRSC contribution was intended as a non-federal contribution, but that in this instance Mr. Gray used a separate bank account for the contribution rather than having the funds transferred to the account maintained by Ms. Fletcher for disbursement to the recipient committee. *See Response at 7, Fletcher Aff. at ¶ 14.* Despite explicit instructions to the bank that the contribution was to be

non-federal, the bank directly issuing the check failed to designate it as such. *See id.* Moreover, many attendance fees believed to have been non-federal payments were deposited by the recipients into federal accounts unbeknownst to Respondents.<sup>6</sup> *See id.* at 6 and Fletcher Aff. at ¶ 15.

Prior to publishing the article which prompted the complaint in this matter, the Wall Street Journal contacted Mr. Gray concerning his excessive contributions (as well as the contributions misattributed to Ms. Fletcher discussed in the preceding section), thereby bringing to light Respondents' calculation errors. *See id.* at 5 and Fletcher aff. at ¶ 6. In response, Mr. Gray again instructed his staff to review his contribution records. This review confirmed that Mr. Gray had exceeded the annual limits. *See id.* The review disclosed that various contributions intended as non-federal had been deposited into federal accounts, and that various candidate contributions had been incorrectly counted towards the annual limit for the year when made and not for the year of the election as required by the Act. As a result, Mr. Gray again sought refunds and redesignations of various contributions (as well as re-attributions of contributions improperly attributed to Ms. Fletcher). Respondents conclude that these corrective actions taken in 1994 and 1998 have brought Mr. Gray into compliance with the Act.

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<sup>6</sup> Respondents' explanations raise questions concerning the recipient committees' possibly improper deposit of the funds. Federal committees may only deposit into their federal accounts contributions designated for the account, contributions resulting from solicitations expressly stating that the contributions will be used for federal purposes and contributions from contributors who were informed that all contributions are subject to the FECA. *See* 11 C.F.R. § 102.5(a)(2). Additional information concerning the individual transactions would be necessary to determine any violations of this provision. Because it appears that only the attendance fees totaling approximately \$3,090 were contributed with the understanding that they were non-federal, this Office does not recommend pursuing this issue.



However, a review of the Commission's databases discloses that, despite Mr. Gray's efforts, his aggregate contributions for the years 1994 and 1998 remain in excess of the twenty-five thousand dollar limit. According to Respondents' calculations, Mr. Gray's aggregate federal contributions for 1994 stand at \$24,898. Respondents' identify a total \$66,498 in contributions made by Mr. Gray for 1994, reduced through refunds and re-designations by \$41,600. However, this Office's examination of the Commission's data bases and committee reports suggests that Respondents, in reconstructing Mr. Gray's contribution history, failed to identify one additional \$500 candidate contribution. Moreover, this Office was unable to confirm two re-designations of \$750 each cited by Respondents. Accordingly, Mr. Gray's total contributions stand at \$26,898, still \$1,898 in excess of the annual limit.

Similarly, there also appears to be a slight excess with respect to Mr. Gray's aggregate 1998 contributions. Because Mr. Gray's 1998 contributions were not at issue in the complaint in this matter, Respondents have not addressed them. However, this Office's internal review of the Commission databases discloses that Mr. Gray appears to have exceeded the annual limit by \$600.

Respondents' faulty record keeping also resulted in other violations by Mr. Gray. For the three election cycles at issue, Mr. Gray contributed a combined \$5,166 in excess of the \$1,000 per election contribution limit. These excessive contributions were made to eight of the ninety candidate committees Mr. Gray contributed to during the years at issue. *See* 2 U.S.C. § 441a(a)(1)(A). Similarly, in 1996 Mr. Gray exceeded the twenty thousand dollar contribution limit to party committees by \$410. It appears that this

violation resulted from the committee designating as contributions attendance fees believed by Mr. Gray to not count towards the contribution limits.

It appears that Mr. Gray's faulty record keeping has resulted in violations of 2 U.S.C. §§ 441a(a)(1)(A), (a)(1)(B) and (a)(3). Accordingly, this Office recommends that the Commission find reason to believe Mr. Gray violated these provisions of the Act. However, contrary to Complainant's allegation, Respondent's violations do not appear to have resulted from deliberate or willful conduct, but rather were due to error. Thus, this Office does not recommend that the Commission find that Mr. Gray acted knowingly and willfully with regard to these violations.

Because of the circumstances giving rise to the violations and Respondent's substantial efforts to correct the violations, this Office further recommends that the Commission provide Respondent Gray an opportunity to take the additional corrective action necessary to bring himself into compliance with the Act. The notification letter to Mr. Gray will identify the contributions needing corrective action, contain a request that the necessary corrective action to be taken by Respondent and that he provide this Office confirmation of the corrective action within thirty days, and admonish Respondent that steps be taken to avoid future violations. Upon receipt of satisfactory confirmation that Respondent has brought himself in into compliance with the Act, this Office will recommend that the Commission take no further action against Mr. Gray and close the file.

### C. Alleged Section 441a(A)(1)(C) Violation

Complainant alleges that Mr. Gray violated Section 441a(a)(1)(C) with regard to his contributions to the New Republican Majority Fund. Complainant further alleges that the New Republican Majority Fund and Senator Trent Lott violated 2 U.S.C.

§ 441a(f) by accepting Mr. Gray's contributions. Section 441a(a)(1)(C) limits the amount an individual can contribute to a multi-candidate political action committee ("PAC") to \$5,000 per year. Section 441a(f) prohibits a political committee, and its employees and officers, from accepting contributions in excess of the contribution limitations of the Act.

A review of the Commission's databases and the New Republican Majority Fund disclosure reports reveals only one contribution from Mr. Gray to this PAC. The contribution was reported by the PAC as received on March 10, 1997 and totaled \$5,000, within the contribution limits.<sup>7</sup> It is unclear what violation Complainant believes resulted from this transaction. Accordingly, this Office recommends that the Commission find no reason to believe that Mr. Gray violated 2 U.S.C. § 441a(a)(1)(C). Consistently, this Office further recommends that the Commission find no reason to believe either the New Republican Majority Fund or Senator Trent Lott violated 2 U.S.C. § 441a(f).

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<sup>7</sup> As with other contributions at issue, Mr. Gray's contribution was initially misattributed to Ms. Fletcher.

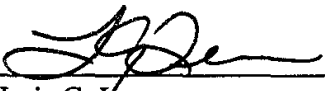
### III. RECOMMENDATIONS

1. Find no reason to believe C. Boyden Gray violated 2 U.S.C. § 441f.
2. Find no reason to believe Jeanne Fletcher violated 2 U.S.C. § 441f.
3. Find reason to believe C. Boyden Gray violated 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(1)(B) and 441a(a)(3).
4. Find no reason to believe C. Boyden Gray violated 2 U.S.C. § 441a(a)(1)(C).
5. Find no reason to believe the New Republican Majority Fund and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 441a(f).
6. Find no reason to believe Senator Trent Lott violated 2 U.S.C. § 441a(f).
7. Approve the attached Factual and Legal Analyses and appropriate letters.

Lawrence M. Noble  
General Counsel

2/26/99  
Date

BY:

  
Lois G. Verner  
Associate General Counsel

#### Attachments

1. Gray and Fletcher Factual and Legal Analysis
2. New Republican Majority Fund and Senator Trent Lott  
Factual and Legal Analysis